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IN THE

Supreme Court of the United States

October Term, 1963

No. 470

JOHN CLAY,

Petitioner,

v.

SUN INSURANCE OFFICE, LIMITED,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT

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INDEX

PAGE

The Opinion of the Court Below and Prior Opinions in This Case 1

The Question Presented for Review 2

Constitutional Provisions and Statutes Involved ... 2

Statement of the Case 3

Summary of Argument 7

ARGUMENT:

POINT I—The decision below should be sustained on the basis of the decided cases 10

POINT II—The decision below should be sustained as a matter of policy because the interests of the forum state are not sufficient to outweigh competing interests 18

CONCLUSION 35

Citations

CASES:

Alaska Packers Ass'n v. Industrial Accident Commission, 294 U. S. 532 (1935) 16

Carroll v. Lanza, 349 U. S. 408 (1955) 16

Clay v. Sun Ins. Office, Ltd., 363 U. S. 207 (1960) 1, 6

Equitable Life Assur. Soc. v. McRee, 75 Fla. 257, 78 So. 22 (1918) 31

Galliher v. State Mutual Life Ins. Co., 150 Ala. 543, 43 So. 833 (1907) 17

Griffin v. McCoach, 313 U. S. 498 (1941) 14, 16

Hanson v. Denckla, 357 U. S. 235 (1958) 29

Hartford Accident & Indemnity Co. v. Delta & Pine Land Co., 292 U. S. 143 (1934) .. 7, 10, 11, 27n

PAGE

CASES (Cont'd):

Hartzell v. Maryland Casualty Co., 163 Ill. App. 221 (1911) 26
Hess v. Pawloski, 274 U. S. 352 (1927) 15
Home Ins. Co. v. Dick, 281 U. S. 397 (1930) .. 7, 10, 17
Hoopeston Canning Co. v. Cullen, 318 U. S. 313 (1943) 17
J. B. Effenson Co. v. Three Bays Corp., 238 F. 2d 611 (5th Cir. 1956) 32, 33-34
McGee v. Int'l Life Ins. Co., 355 U. S. 220 (1957) 9, 29
M. & T. Trust Co. v. Export S. S. Co., 262 N. Y. 92, 186 N. E. 214, *cert. denied*, 290 U. S. 650 (1933) 21
Mutual Life Ins. Co. v. Hess, 161 F. 2d 1 (5th Cir. 1947) 31
Order of United Commercial Travelers v. Wolfe, 331 U. S. 586 (1947) 7, 13
Osborn v. Ozlin, 310 U. S. 53 (1940) 17
Pacific Employers Ins. Co. v. Industrial Accident Commission, 306 U. S. 493 (1939) 8, 14, 16
Radick v. Underwriters at Lloyd's, London, 137 F. 2d 21 (7th Cir. 1943) 26
Sapinkopf v. Cunard S. S. Co., 254 N. Y. 111, 172 N. E. 259, *cert. denied*, 282 U. S. 879 (1930) 21
Scheibel v. Agwilines, Inc., 156 F. 2d 636 (2d Cir. 1946) 34
Schluter v. Nat'l Union Fire Ins. Co., 144 So. 2d 95 (Dist. Ct. App. Fla. 1963) 30
Southern Pacific Co. v. Arizona, 325 U. S. 761 (1945) 32
State Bd. of Ins. v. Todd Shipyards Corp., 370 U. S. 43 (1962) 32
Sun Ins. Office, Ltd. v. Clay, 319 F. 2d 505 (5th Cir. 1963) 1, 6, 30
Sun Ins. Office, Ltd. v. Clay, 133 So. 2d 735 (1961) 2, 6, 10, 30, 31

PAGE

CASES (Cont'd):

Sun Ins. Office, Ltd. v. Clay, 265 F. 2d 522 (5th Cir. 1959) 1, 5

Trichelle v. Sherman & Ellis, Inc., 259 Ill. App. 346 (1930) 26

Union Central Life Ins. Co. v. Barnes, 175 Ky. 364, 194 S. W. 339 (1917) 31

United States v. South-Eastern Underwriters Ass'n, 322 U. S. 533 (1944) 23, 32

Watson v. Employers Liability Assur. Corp., 348 U. S. 66 (1954) 8, 14, 28

CONSTITUTIONAL PROVISIONS AND STATUTES:

Constitution of the United States, Amendment XIV 2

Constitution of the United States, Article I, Section 10 2

Constitution of the United States, Article IV, Section 1 2

Carriage of Goods by Sea (46 U. S. C.)
§ 1303 33
§ 1303(6) 19

Cal. Ins. Code, §§ 1610-1620 29

Fla. Laws 1947, ch. 24087, § 3, Fla. Ins. Laws, § 642.03(n) (1953) (now Fla. Stat. § 627.0515 (1961)) 26

Fla. Stat. (1961)
§ 25.031 6
§ 95.03 ..... 3, 5, 6, 10, 28, 30
§ 95.11(3) 3
§ 517.21 21
§ 624.0201(2) 28
§ 626.0504 29

PAGE

CONSTITUTIONAL PROVISIONS AND STATUTES (Cont'd):

§§ 627.011-.391 23
§ 627.01001(2) 12, 28
§ 627.01091 27
§ 627.01091(1) 28
§ 632.311 26

Ill. Rev. Stat., ch. 73 (Ill. Ins. Code) (1961)
§ 616, Class 3(d) 4, 24
§ 755(2) 4, 23
§ 1008(1) 4, 25
§§ 1065.1-.35 23
§ 1065.4 24
§ 1065.19 24
§ 1065.20 24
§ 1065.22 ..... 4, 23
§ 1065.22(8) 24
§ 1065.23 ..... 4, 24
§ 1065.24 24
§ 1065.25 24
§ 1065.34 ..... 4, 24
§ 1065.57 24

Interstate Commerce Act (49 U. S. C.):
§ 16(3)(a) 19
§ 16(3)(c) 19-20
§ 20(11) 19
§ 319 20

McCarran-Ferguson Insurance Regulation Act (15 U. S. C. §§ 1011-15) 23, 32

N. Y. Ins. Law, § 168(6) 21

Securities Act of 1933 (15 U. S. C.):
§§ 77a-77aa 20
§ 77m 20

Securities Exchange Act (15 U. S. C.):
§§ 78a-78hh 20
§ 78i(e) 20

PAGE

CONSTITUTIONAL PROVISIONS AND STATUTES (Cont'd):

Shipowners' Limited Liability Act (46 U. S. C. § 183b(a) 19

Uniform Commercial Code:
§ 2-725 21
§ 4-406 21
§ 6-111 21
§ 7-204 21
§ 7-309 21

Uniform Securities Act, § 410(e) 20-21

MISCELLANEOUS:

Carnahan, Conflict of Laws & Life Insuance Contracts (2d ed. 1958):
§ 26h, nn. 83, 84 27
§ 137 27
§ 138 27

CCH Ins. L. Rep., Fire & Casualty, pp. 2003-06 (1959) 22

Goodrich, Conflict of Laws, p. 32 (3rd ed. 1949) .. 31

Insurance Department Rulings—1944, pp. "Florida, 1-2" (Underwriter Printing & Publishing Co., New York) 27

The Spectator, Insurance Laws, Taxes & Fees, p. 247 (1959) 27

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT

The Opinion of the Court Below and Prior Opinions in This Case

1. The judgment to be reviewed herein was entered by the Court of Appeals for the Fifth Circuit on June 19, 1963 (R. 66). The court's opinion, *Sun Ins. Office, Ltd.* v. *Clay* is reported at 319 F. 2d 505 (R. 56). The Petition for Certiorari was granted by the Court on December 2, 1963 (*Clay* v. *Sun Ins. Office, Ltd.*, 375 U. S. 929 (R. 67)).

2. The prior opinions in this case are as follows:

(a) Opinion of the United States Court of Appeals for the Fifth Circuit, dated April 8, 1959, *Sun Ins. Office, Ltd.* v. *Clay*, 265 F. 2d 522 (R. 26).

(b) Opinion of the United States Supreme Court dated June 13, 1960, *Clay* v. *Sun Ins. Office, Ltd.*, 363 U. S. 207.

(c) Opinion of the Supreme Court of Florida, dated October 18, 1961, *Sun Ins. Office, Ltd.* v. *Clay*, 133 So. 2d 735 (R. 44).

The Question Presented for Review

Where an insurer issues and delivers in Illinois, to a resident of Illinois, a personal property floater insurance policy containing a suit clause limiting the time to sue which is legal under the law of Illinois and thereafter the assured changes his residence to Florida where he sustains a loss under the policy, may the insurer, under the Constitution, be deprived of its defense based on the suit clause by the application of a Florida statute which prohibits such limitations in general terms not specifically applicable to foreign contracts of insurance?

Constitutional Provisions and Statutes Involved

1. The provisions of the United States Constitution involved in this case are as follows:

(a) The due process clause of the Fourteenth Amendment which provides:

> "* * * nor shall any State deprive any person of life, liberty or property, without due process of law; * * *."

(b) Article 1, Section 10, which provides:

> "No State shall * * * pass any * * * Law impairing the Obligation of Contracts * * *."

(c) Article IV, Section 1, which provides:

> "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial proceedings of every other State * * *."

2. The Florida statute involved is Fla. Stat., § 95.03 (1961), which provides as follows:

> "Stipulations in contract shortening period of limitation illegal.—All provisions and stipulations contained in any contract whatever entered into after May 26, 1913, fixing the period of time in which suits may be instituted under any such contract, or upon any matter growing out of the provisions of any such contract, at a period of time less than that provided by the statute of limitations of this state, are hereby declared to be contrary to the public policy of this state, and to be illegal and void. No court in this state shall give effect to any provision or stipulation of the character mentioned in this section."

(Fla. Stat., § 95.11(3) (1961) provides for a five year limitation for actions on written contracts not under seal.)

Statement of the Case

The text of the clause which is sought to be invalidated reads as follows:

> "Suit Clause: No suit, action or proceeding for the recovery of any claim under this Policy shall be sustainable in any court of law or equity unless the same be commenced within twelve (12) months next after discovery by the Assured of the occurrence which gives rise to the claim. Provided, however, that if by the laws of the state *within which this Policy is issued* such limitation is invalid, then any such claims shall be void unless such action, suit or proceeding be commenced within the shortest limit of time permitted by the laws of such state to be fixed herein." (Pl. Ex. A,R. 5) (Emphasis added.)

The facts material to the constitutional issue, which is the sole issue presented in this case, are as follows:

The Respondent, a British company doing business in various states, including Illinois and Florida (Pl. Ex. A,

R. 6) issued a policy of insurance to Petitioner on April 22, 1952 for a term of three years expiring April 22, 1955, through its local Illinois agent (Pl. Ex. A, R. 3). When the policy was issued, the Petitioner was a citizen of Illinois (R. 16), and the policy specified the address in Chicago, Illinois where he resided (Pl. Ex. A, R. 3). The entire premium for the full term of the policy was paid in Chicago and the policy was delivered in Chicago (R. 22-23). Furs, jewelry and paintings covered by the policy were appraised by Chicago dealers (Pl. Ex. A, R. 7, 8). The policy in bold type is designated "ILLINOIS PERSONAL PROPERTY FLOATER POLICY" and covers loss occurring anywhere in the world (Pl. Ex. A, R. 3).

A personal property floater policy is an inland marine policy governed by the Illinois Insurance Code, Ill. Rev. Stat., ch. 73, § 616, Class 3(d) (1961). The form of all such policies issued and delivered in Illinois, as well as the rate to be applied, must be filed with and approved by the Director of Insurance of Illinois (Ill. Rev. Stat., ch. 73, §§ 755(2), 1065.22 (1961)). No company may issue and deliver a policy in Illinois on any form, or charge a rate therefor, except in accord with such approved filings under penalty of law (Ill. Rev. Stat., ch. 73, §§ 1065.23, 1065.34 (1961)). Loss reserves are required to be maintained covering all losses as to which a notice of claim is received by the insurer. (Ill. Rev. Stat., ch. 73, § 1008(1) (1961)). The Illinois form issued to the Petitioner herein contained the one year limitation clause set forth above.

After the three year policy was issued and the premium fully paid, the Petitioner came down to Florida by boat and lived on his boat in "different places", including Miami and Fort Lauderdale (R. 17). He thereafter lived temporarily at an [redacted] located in Clewiston, Florida (R. 17). In June, 1954, more than two years after the policy was issued, he moved into a house located on a ranch at Lake Harbor, Florida (R. 15, 17), where in December, 1954 and January,

1955, the losses for which claim is made under the policy occurred (R. 18). The losses consist only of a small portion of the items insured under the policy (R. 3) and there is no evidence as to how much of the property covered by the policy was located in Florida at the time of the loss. A property settlement entered into between Petitioner and his wife shortly thereafter "referred to property outside the State of Florida" (R. 21). Petitioner sent proofs of loss to Respondent's agent in Illinois and the proofs were received by the agent at its office in Chicago, Illinois (R. 2). Respondent denied liability on April 6, 1955 (R. 20). Suit on the policy was instituted in the United States District Court for the Southern District of Florida on May 20, 1957 (R. 1) more than two years after discovery of the losses.

The defense asserted by Respondent which is material to the issue presented here was that the action was not brought within the time limited by the suit clause contained in the policy and was therefore barred.

Petitioner's suit in the District Court was tried before a jury which found for Petitioner in the amount of $5,100 plus attorney's fees assessed against the Respondent amounting to $1,700 (R. 11), and judgment was entered for the total sum (R. 11). Respondent moved for judgment *non obstante veredicto* based, *inter alia*, on its defense under the twelve month suit clause (R. 12). This motion was denied by the District Court without opinion, apparently on the basis that Fla. Stat., § 95.03 rendered the clause void (R. 13). On appeal to the United States Court of Appeals for the Fifth Circuit, the judgment of the District Court was reversed and judgment was entered in favor of Respondent on April 8, 1959 (*Sun Ins. Office, Ltd.* v. *Clay*, 265 F. 2d 522 (R. 35)).

The Court of Appeals held that it would not undertake to determine whether under the law of Florida, Section 95.03 applied to the foreign contract of insurance since

even if the Florida invalidating statute were held to apply, such application would be invalid under the Fourteenth Amendment as a deprivation of Respondent's property rights. In view of its holding of unconstitutionality which barred a recovery by the assured in any event, the Court of Appeals also refrained from passing on another question of state law relating to the coverage of the policy where a loss is caused by the deliberate act of the assured's wife then residing with him.

Certiorari was granted by the Court (361 U. S. 874 (1959) (R. 40)), and, on June 13, 1960, the Court rendered its decision, *Clay* v. *Sun Ins. Office, Ltd.*, 363 U. S. 207, holding that the question of the applicability, under Florida law, of Section 95.03 to the contract in issue, as well as the question of policy coverage, should have been settled before the constitutional question was reached. Accordingly, the decision of the Court of Appeals was vacated and the case was remanded with directions that all questions of Florida law be certified to the Supreme Court of Florida for determination by that court pursuant to Fla. Stat., § 25.031 (1961). By opinion filed October 18, 1961, *Sun Ins. Office, Ltd.* v. *Clay*, 133 So. 2d 735 (R. 44), the Supreme Court of Florida, in answer to the questions of Florida law which were presented to it pursuant to the mandate of the Court, declared that there was coverage under the policy and that under Florida law, Section 95.03 was applicable to the Illinois contract of insurance involved in this case.

All questions of state law having been determined in obedience to the Court's mandate, the United States Court of Appeals, after receiving briefs and hearing argument, again rendered an opinion on the constitutional issue in favor of Respondent. This opinion, dated June 19, 1963, *Sun Ins. Office, Ltd.* v. *Clay*, 319 F. 2d 505 (R. 56), held that under the due process clause of the Constitution, the contacts of Florida were insufficient to justify the deprivation of Respondent's defense based on the Illinois contract.

A petition for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit was granted by the Court on December 2, 1963 (R. 67).

Summary of Argument

The decision of the Court of Appeals should be sustained because it is supported by the cases decided by the Court. It holds that a clause containing a short limitation period in a personal property floater policy issued in Illinois to a resident of Illinois which is valid under Illinois law may not be voided by a Florida statute of general nature because the insured thereafter moved to Florida and sustained a loss under the policy in that state.

Under the due process clause of the Constitution, a contract valid where made may not be nullified by a statute of the forum unless the statute expresses a strong justifiable policy for the protection of the residents of the state which outweighs the competing interests in preserving the contract.

The Court has never held that a limitation clause in a foreign contract was of such consequence that the statute of the forum state would be permitted to prevail over the contract. On the contrary it has held in all of the cases dealing with suit limitations that the contract provision was to be upheld. *Home Ins. Co.* v. *Dick*, 281 U. S. 397 (1930); *Hartford Accident & Indemnity Co.* v. *Delta & Pine Land Co.*, 292 U. S. 143 (1934); *Order of United Commercial Travelers* v. *Wolfe*, 331 U. S. 586 (1947). In these cases it was found that the policy of the forum state was not strong enough to override the contract.

There are cases where the Court has permitted the forum state to invalidate a foreign contract, but these have all been cases in which the forum state was protecting a special interest of its residents such as a right to sue an insurance company directly where its residents would be

without remedy in its courts (*Watson* v. *Employers Liability Assur. Corp.*, 348 U. S. 66 (1954)), or a right to workmen's compensation benefits for persons injured within the state (*Pacific Employers Ins. Co.* v. *Industrial Accident Commission*, 306 U. S. 493 (1939)).

The test of due process with respect to legislation dealing with internal matters is different from the test to be applied where the statute seeks to invalidate a foreign contract. If Florida wishes to retain its antiquated statute which invalidates contracts made within its borders limiting the time to sue thereon to any period less than five years, that is a matter between the legislature and the people of Florida, but to apply its general invalidating statute to a foreign contract there must be a clearly expressed policy for the protection of its residents sufficiently strong to outweigh the interests in preserving the contract.

Applying the process of weighing competing interests we submit that the contract is not so repugnant to the legitimate interests of Florida as to justify its nullification for the following reasons:

(a) That the contract provision is not objectionable in and of itself is demonstrated by the prevalence of many one year and two year contractual limitations which are permitted or required in businesses regulated by the federal government, such as the shipping industry, the railroad industry and the securities business, and in the prevalence of one year limitations in businesses regulated by the states, such as commercial transactions, which are the subject of the Uniform Commercial Code, and insurance contracts, where the majority of the states make mandatory the use of a standard fire policy containing a one year suit clause.

(b) Considering the interest of Illinois, the state where the contract was entered into by the parties who resided there, we find that the form of the policy was regulated under the Illinois Insurance Code which requires the filing with and approval by the Insurance Department of all

policies issued in that state, and that the insurer was required by the law of that state to issue therein only policies filed with and approved by the Insurance Department. The control by the states of rates and forms of insurance contracts is related to the solvency of insurance companies which must maintain loss reserves with respect to all claims until they have been disposed of and this is part of the reason for the requirement under the insurance codes that suits on insurance policies be instituted within a reasonably short period.

(c) The Florida Insurance Code manifests no policy against short periods of limitation in insurance contracts made within its borders. It has only two provisions on this subject, one respecting disability insurance and another respecting certain life policies, where short limitation clauses are required or permitted. Its Insurance Commissioner adopted for use in Florida the standard fire insurance policy providing for a one year suit clause. Its Insurance Code expressly disclaims interest in forms of policies other than those issued or delivered in Florida. Where Florida does have a strong policy, it makes it clear. For example, with respect to the delivery in Florida of insurance policies by unlicensed companies it has adopted the Unauthorized Insurers Process Act similar to the California statute which was held constitutional in *McGee* v. *Int'l Life Ins. Co.*, 355 U. S. 220 (1957).

(d) The Florida statute in issue, as interpreted by the Florida Supreme Court (133 So. 2d 735), is so broad as to make it apply to any contract made in another state between residents of other states relating to subject matters in other states as long as the court has jurisdiction. While the Florida Supreme Court did not pass on the issue of constitutionality, its interpretation renders the statute clearly unconstitutional. The significance of the decision is that the statute as interpreted by the court makes it apparent that there is no special interest of the residents of Florida to be protected.

(e) In determining whether the Florida statute outweighs competing interests, consideration should be given to the national interest in the uniformity of interpretation and enforcement of contracts. Congress has ceded to the states the power to regulate insurance within their borders but that does not require the acceptance of the principle that a contract valid in one state should be interpreted and enforced in different ways by the various states unless there is a compelling necessity to do so, which is not here present.

POINT I

The decision below should be sustained on the basis of the decided cases.

The Supreme Court of Florida held that the Florida statute (§ 95.03) which voids inconsistent limitations clauses in contracts sued on in Florida is applicable to the contract here in issue which was made in Illinois and is valid in that state. (*Sun Ins. Office, Ltd.* v. *Clay*, 133 S. 2d 735 (1961).) It did not pass upon the constitutionality of the statute.

Following the decision of the Florida Court, the Court of Appeals held that the Florida statute was unconstitutional as applied to the contract in this case on the authority of the principle laid down in *Home Ins. Co.* v. *Dick*, 281 U. S. 397 (1930) and *Hartford Accident & Indemnity Co.* v. *Delta & Pine Land Co.*, 292 U. S. 143 (1934), which it regarded as controlling on this issue.

In *Home Ins. Co.* v. *Dick, supra*, the Court held, in a unanimous opinion, that a Texas statute prohibiting contract limitations shorter than two years could not constitutionally be applied to a suit clause in an insurance contract made outside the state between non-residents in a case in which the loss had occurred outside the state.

In *Hartford Accident & Indemnity Co.* v. *Delta & Pine Land Co., supra,* the Court held that a forum statute voiding a similar limitation in an insurance policy could not be constitutionally applied to a contract made in another state where the loss occurred *in the forum state.* There, a Mississippi corporation doing business in Mississippi and Tennessee and then having its principal place of business in Tennessee procured a fidelity bond in Tennessee protecting it against loss resulting from the dishonesty of its employees in any position anywhere. The policy listed twenty-one employees who were then working in Mississippi. The contract, which was executed and delivered in Tennessee provided that any claim had to be made within fifteen months after its termination. One of the employees committed defalcations in Mississippi and the assured, not having complied with the fifteen month limitation provision, sued on the bond in Mississippi to recover its loss. The Mississippi statute provided that a limitation period in an insurance contract covering Mississippi risks which differs from the limitation period prescribed under Mississippi law shall be void and may not be altered by private agreement. The Court sustained the contract in a unanimous decision, stating:

> "A legislative policy which attempts to draw to the state of the forum control over the obligations of contracts elsewhere validly consummated and to convert them for all purposes into contracts of the forum regardless of the relative importance of the interests of the forum as contrasted with those created at the place of the contract, conflicts with the guaranties of the Fourteenth Amendment * * *." (292 U. S. at 150).

The facts in *Delta & Pine* are similar in all essential respects to the facts in the case in issue: the policy was issued in the foreign state; the assured was a resident of the foreign state at the time of its issuance; and the loss occurred in the forum state. The facts differ, however, in

three respects and these differences establish a lesser interest of Florida in the contract under consideration:

(1) In *Delta & Pine* a portion of the risk was located in the forum state when the policy was issued, whereas here the property was located in Illinois when the policy was issued.

(2) There the assured was a corporation of the forum state and was doing business in both the forum and contract states when the policy was issued, whereas here the assured was a resident and citizen only of Illinois when the policy was issued.

(3) There the statute was a direct expression of the policy of Mississippi in relation to insurance contracts covering risks in Mississippi, whereas here the statute is a part of the general statutes of limitations of Florida and does not expressly apply to insurance contracts, the Florida Insurance Code provisions relating to insurance contracts expressly excluding control by Florida over insurance contracts issued in other states (Fla. Stat., § 627.01001(2) (1961)).

It is these differences which support the view expressed by the Court of Appeals in its last opinion: "The local contacts of Florida, in the case before us, are certainly no more, and in our view are less, than in the Delta & Pine case" (319 F. 2d 505, 512).

Delta & Pine is consistently treated by the courts as a case involving a clause in a contract limiting the right of the insured to bring his action by his failure to comply with a time period clause in the contract similar to a time to sue clause. Petitioner argues that the case is not in point because the clause there in issue involved a failure to give notice of claim within the contract period. We do not believe the distinction is significant. In any event, if the clause were not regarded as in conflict with a statutory limitation for bringing suit, there would be no controversy.

The Mississippi court held that under the law of Mississippi the fifteen months notice clause was a limitation on the right to bring the action and as such was void because in conflict with the Mississippi statute on limitation of actions applicable to insurance companies. The legal issue, therefore, is the same in *Delta & Pine* as in this case.

The principle of *Delta & Pine* was affirmed in *Order of United Commercial Travelers* v. *Wolfe*, 331 U. S. 586 (1947) where the Court sustained a suit limitation clause in a life insurance contract issued by an Ohio fraternal benefit society against attack by a South Dakota invalidating statute. The Court concluded that the public interest in sustaining the contract outweighed the interest of the forum state as expressed in a general invalidating statute similar to the general statute of Florida. The contract was upheld despite the fact that the assured was a resident of South Dakota at the time the contract was entered into and it was issued to him in South Dakota. The Court recognized that there were situations, such as workmen's compensation cases, which involve local interests of more importance than a policy against a limitation clause in a contract where the result should be different. Great emphasis was placed on the principle of uniformity in the enforcement of contracts which would be disturbed if each forum were to assert its own attitude respecting limitation clauses.

In his dissenting opinion in the *Wolfe* case, Mr. Justice Black makes a strong argument against sustaining the limitation on the ground that the contract was issued in South Dakota to a resident of South Dakota where the risk was located at the time of its issuance. This argument does not apply to the present case where the contract was issued in Illinois to a resident of Illinois and the risk was in Illinois at the time of its issuance. Thus under the dissenting opinion of Mr. Justice Black as well as under the majority opinion in the *Wolfe* case, the contract provision in this case would be sustained.

In all of the decisions of the Court where it was sought to invoke a forum statute to nullify a limitations clause in a contract made in another state, the interest of the forum state was held insufficient to abrogate the contract. However it was recognized by the Court in those cases, as stated in *Delta & Pine*, that a contract made in another state would not have to be enforced by the forum state where it was "so repugnant to its vital interests as to justify enforcement in a different manner" (292 U. S. at p. 150). A number of such cases have been so decided by the Court. *Watson* v. *Employers Liability Assur. Corp.*, 348 U. S. 66 (1954); *Pacific Employers Ins. Co.* v. *Industrial Accident Commission*, 306 U. S. 493 (1939); *Griffin* v. *McCoach*, 313 U. S. 498 (1941).

In *Watson* v. *Employers Liability Assur. Corp., supra*, the manufacturer of Toni home permanent preparations was insured for liability under a policy delivered in Massachusetts which contained a clause providing that no action shall lie against the insurer unless a judgment is first obtained against the insured. The product was sold throughout the country and the plaintiff, who was injured by its use in Louisiana, sought to sue the manufacturer in that state, but service was contested. The plaintiff then sued the insurance company directly in Louisiana relying upon a Louisiana statute which specifically provided that a direct action may be brought against the liability insurer by a person injured in Louisiana despite the provision of a policy forbidding such direct action. The Court held that the interest of Louisiana in protecting those injured within its borders was of sufficient importance to justify the nullification of the foreign contract. In considering the weight of Louisiana's interest in this matter, the Court stated that an injured person in Louisiana may require treatment in the state's hospitals or may need public assistance and that if she were not able to sue the insurer in that state, she would sustain a substantial burden in having to travel to Massachusetts to obtain a remedy.

The Court said that "Mrs. Watson, but for the direct action law, could not get her case tried without going to Massachusetts or Illinois although she lives in Louisiana and her claim is for injuries from a product bought and used there" (348 U. S. at 72-73).

The Court did not overrule *Delta & Pine* but affirmed the principle there stated. It distinguished that case on the ground that no vital interest of the forum state was involved, stating that: "Mississippi activities in connection with the policy were found to be so 'slight' and so 'casual' that Mississippi could not apply its own law in such way as to enlarge the obligations of the Tennessee contract" (348 U. S. at 71).

The vital interest of the forum state in *Watson* is apparent. The decision in that case represents the culmination of a great number of efforts made by the states to give a remedy to persons injured within their borders. These efforts began with statutes permitting a direct cause of action against the insurer after a judgment against the insured was returned unsatisfied. Such a remedy was effective if the injured party was able to bring an action against the tortfeasor; however where the defendant cannot be found within the state the injured party is relegated to an action in some other jurisdiction, which is cumbersome and expensive. Statutes which permit a direct action against the insurer are designed to meet a problem similar to the evil which gave rise to the non-resident motorist statutes which subject a foreign motorist to the jurisdiction of the state within which he causes the injury. The validity of such statutes was upheld in *Hess* v. *Pawloski*, 274 U. S. 352 (1927). The Louisiana statute in the *Watson* case is an extension of the same principle to deal with the problem of the non-resident who remains outside the state but commits a tort within the state by sending in a product dangerous to its inhabitants. The effect of these statutes is not to impose a liability on the insurer which it did not already have. They make it possible for residents of the

state to seek redress within the state by proceeding directly against the insurer upon whom the liability would in any event ultimately fall. They differ substantially from a situation where the forum state attempts to revitalize a contract on which suit has been barred by the running of the limitation period agreed upon by the parties.

Pacific Employers Ins. Co. v. *Industrial Accident Commisssion, supra,* involved the application of a California statute which afforded a remedy under the California Workmen's Compensation Law to an employee injured in California contrary to the provision of a contract requiring the application of Massachusetts law. Here, too, the Court recognized the interest of California in protecting employees who are injured in California and who have hospital bills to pay there as justifying the application of the California statute despite the fact that the employment contract was made in Massachusetts. The Court followed the principle of workmen's compensation cases in recognizing the interest of a state in affording a remedy to an injured employee who might otherwise become a public charge. In accord: *Alaska Packers Ass'n* v. *Industrial Accident Commission,* 294 U. S. 532 (1935) and *Carroll* v. *Lanza,* 349 U. S. 408 (1955).

Griffin v. *McCoach,* 313 U. S. 498 (1941) involved a policy issued and delivered in New York to an insured who was a resident of Texas, naming as beneficiaries persons who were creditors of the assured at the time, but who later ceased to be creditors. Under the law of New York, such persons have a continued insurable interest in the contract, whereas, under the law of Texas, a beneficiary must have an insurable interest at the time of death in order to recover the insurance proceeds. The Court held that Texas was not required to respect the contract if it was obnoxious to its policy to protect its residents against the assumed dangers of insurance on their lives held by strangers.

In the field of insurance the courts have consistently upheld state legislation regulating the insurance business in the state against the objection that the states were exercising extra-territorial power, on the ground that the state may protect the welfare of the insuring public within its borders (*Osborn* v. *Ozlin*, 310 U. S. 53 (1940); *Hoopeston Canning Co.* v. *Cullen*, 318 U. S. 313 (1943)). These cases are cited by the courts as upholding the interest of the state in protecting its residents and there can be no quarrel with the principles for which they stand. But they are not relevant to the issue as to whether a forum state may abrogate a contract valid in another state.

Nor are the choice of law cases relevant, where the issue is whether the statute of limitations of the forum or the place where the contract was made should be applied. Those cases deal with remedies whereas here the invalidating statute of the forum affects a substantive contractual right. The Alabama Supreme Court in *Galliher* v. *State Mutual Life Ins. Co.*, 150 Ala. 543, 43 So. 833 (1907) failed to see this distinction but it was emphasized by Mr. Justice Brandeis in *Home Ins. Co.* v. *Dick* (281 U. S. at 407).

Summarizing the established law on this subject we begin with the general principle that a valid contract is entitled to enforcement in all states; that for a state to abrogate a foreign contract is, except in special circumstances, a denial of due process of law; that in a special class of cases a state will be permitted to abrogate a foreign contract where it is repugnant to the state's declared policy in protecting an important interest of its residents; that in each such case the interest of the state will be weighed against the interest in preserving the contract and the forum state will prevail only where its interests are clearly superior.

The application of the principle of weighing competing interests requires the evaluation not only of the elements of the private transaction of the parties (such as where the

contract was issued, where the parties resided, where the risk was located, etc.) but also of the elements bearing on the competing public interests. In this case the weighing process requires a consideration of the economic factors surrounding the regulation of the insurance business generally and the laws enacted for that purpose which are discussed below.

POINT II

The decision below should be sustained as a matter of policy because the interests of the forum state are not sufficient to outweigh competing interests.

The elements of the private transaction of the parties are as follows: The three year contract of insurance was issued and delivered in Illinois; the insured was a resident of Illinois at the time; the entire premium was paid in Illinois; the property was located in Illinois when the contract was issued; thereafter the insured acquired a residence in Florida and the property which was lost or damaged was located in Florida at the time of its loss or damage; such property consisted only of a small portion of the total personal property covered by the policy and there is no evidence as to whether at the time of the loss other property covered by the policy was in Florida or Illinois or in other states; the insured filed his proof of loss in Illinois.

We turn now to a consideration of the competing public interests and consider:

(a) The general interest in short periods of limitation.

(b) The interest of Illinois in the contract as manifested by its insurance statutes.

(c) The interest of Florida in the contract as manifested by its insurance statutes.

(d) The interest of Florida in the contract as manifested by the invalidating statute.

(e) The national interest in the uniformity of insurance regulation.

(a) The General Interest in Short Periods of Limitation.

At the outset it is important to remove any prejudice against contracts or statutes which require litigation to be instituted within a definite period. There are reasons of public policy for suit limitations as is evidenced by the existence of state and federal statutes which provide for shorter and longer periods to bring actions depending on the nature of the cause of action. Similarly it is customary in private agreements for the parties to stipulate that litigation thereon must be brought within a limited time. In agreements which are regulated by the federal government and the states, short limitation periods are the custom.

(1) *Federally regulated businesses:*

In the shipping industry, the Shipowners' Limited Liability Act approves contracts containing a one year limitation period for liability actions relating to loss of life or personal injury (46 U. S. C. § 183b(a)). The Carriage of Goods by Sea Act not merely approves a one year suit clause but makes such one year period mandatory in actions for loss or damage to goods (46 U. S. C. § 1303(6)).

In the railroad industry, subject to regulation under the Interstate Commerce Act, a two year period of limitation in actions against railroad carriers is permitted (49 U. S. C. § 20(11)). The same two year limitation period is applied to suits against pipeline carriers (49 U. S. C. § 20(11)). In actions brought by railroad carriers and pipeline carriers for recovery of their charges (49 U. S. C. § 16(3)(a)) or brought against them for recovery of overcharges (49

U. S. C. § 16(3)(c)) a maximum two year limitation period is prescribed.

In the case of motor carriers, also regulated under the Interstate Commerce Act, a two year period of limitation in suits by and against such carriers is permitted (49 U. S. C. § 319).

With respect to the securities business, regulated under the Securities Act of 1933 (15 U. S. C. §§ 77a-77aa) and the Securities Exchange Act (15 U. S. C. §§ 78a-78hh), one year suit provisions are the general rule. For example, in an action to enforce a civil liability against underwriters and against persons signing false registration statements, the limitation prescribed is one year after discovery of the violation or one year after discovery should have been made (15 U. S. C. § 77m). The same one year rule applies to actions to enforce a civil liability based on false statements or on a false prospectus (15 U. S. C. § 77m). In civil actions based on manipulation, there is a mandatory one year limitation after discovery of the facts constituting the violation and all such actions are barred within three years after the violation, whether or not discovered (15 U. S. C. § 78i(e)).

A short limitation period in an insurance contract cannot be regarded as "unconscionable" or "overreaching" when Congress demonstrates a policy in favor of one year and two year limitations in actions brought against business interests dealing with the public such as ship owners, railroads, underwriters and corporations issuing securities.

(2) *State regulated businesses*:

Unlike the 1913 Florida statute in issue here, which prevents the parties to a contract from agreeing to a limitation clause of less than five years, modern state statutes favor short periods of limitation.

The Uniform Securities Act (Blue Sky Law), adopted by a number of states, requires a purchaser of securities to bring an action for damages on the contract of sale within two years from the date of the sale (Uniform Securities

Act, § 41(e)). Florida has adopted a forerunner of the Uniform Act containing the same suit clause (Fla. Stat., § 517.21 (1961)).

The Uniform Commercial Code as drafted by the National Conference of Commissioners on Uniform State Laws and by the American Law Institute, which is the most modern body of law governing major commercial transactions, has a number of limitation provisions applicable to particular transactions as follows: in an action for breach of a contract of sale the parties may limit the time to sue to one year by agreement but they may not enter into an agreement providing for a limitation of more than four years (U. C. C. § 2-725); a claim against a bank for cashing a forged or altered check is barred unless the bank is notified thereof within one year (U. C. C. § 4-406); an action for transferring goods in violation of the bulk sales provisions must be brought within six months after the date of the transfer (U. C. C. § 6-111); a warehouse receipt and a bill of lading may provide for any reasonable period of limitation for bringing suit (U. C. C. §§ 7-204, 7-309). One year suit clauses are reasonable. *M & T. Trust Co.* v. *Export S. S. Co.*, 262 N. Y. 92, 186 N.E. 214, *cert. denied*, 290 U. S. 650 (1933); *Sapinkopf* v. *Cunard S. S. Co.*, 254 N. Y. 111, 172 N. E. 259, *cert. denied*, 282 U. S. 879 (1930)).

Turning to the business involved in this case we find that most states in the United States require fire insurance policies to contain one year suit clauses. It is common knowledge that New York has been the leading state in the development of insurance regulation. Its standard fire insurance policy is embodied in its statute (N. Y. Ins. Law, § 168(6)) which makes mandatory the use of that policy, which contains a one year suit clause, by all companies issuing fire insurance contracts in New York. The suit clause reads as follows:

> "No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity * * * unless commenced within twelve months next after inception of the loss."

The New York Standard Fire Insurance Policy, including its mandatory one year suit clause, has been adopted by statute or by action of the Insurance Commissioner in 42 states (CCH Ins. L. Rep., Fire & Casualty, pp. 2003-06 (1959)):

Alabama	Kentucky	Oklahoma
Alaska	Louisiana	Oregon
Arizona	Maryland	Pennsylvania
Arkansas	Michigan	Rhode Island
Colorado	Mississippi	South Carolina
Connecticut	Missouri	South Dakota
Delaware	Montana	Tennessee
D. C.	Nevada	Utah
Florida	New Hampshire	Vermont
Georgia	New Jersey	Virginia
Hawaii	New Mexico	Washington
Idaho	New York	West Virginia
Illinois	North Carolina	Wisconsin
Iowa	Ohio	Wyoming

(The adoption of the policy by the Florida Commissioner is discussed *infra*, p. 27).

Laws which regulate the business of insurance are sustained as being necessary in the public interest and are designed to protect the public against unfair treatment by insurers as well as to protect the solvency of insurers for the benefit of the public. There are reasons for the one year suit clause in the standard policy which are related to the financial condition of insurance companies, their reserves and their premium rates, which are discussed below.

Since the one year suit clause in a policy insuring against fire is regarded by state legislatures and state regulatory bodies as serving the public interest, it is difficult to see how it can be regarded as an evil in a personal property floater policy which also insures against the risk of fire. The

clause serves the same regulatory purpose in both classes of policies as will be shown below.

(b) The Interest of Illinois in the Contract as Manifested by Its Insurance Statutes.

Following the decision in *United States* v. *South-Eastern Underwriters Ass'n*, 322 U. S. 533 (1944), which held that insurance is interstate commerce when carried on over state lines, Congress enacted the McCarran-Ferguson Insurance Regulation Act, (15 U. S. C. §§ 1011-15) which confirmed the jurisdiction of the states to regulate the insurance business. States which previously did not have rating laws, in which rates were made by rating organizations composed of insurance company members, adopted rating laws as a result of which practically all states in the country soon had laws regulating rates for fire, marine and casualty insurance. Under these laws insurers are required to file with state insurance departments rates and forms of policies to which the rates relate. The policy forms are required to be filed because rates without forms are meaningless since a policy form which is more or less favorable to the insured would carry a higher or lower rate. Under the rating laws no form of policy covered by those laws may be issued unless it is filed with the Insurance Department and approved either in advance of issuance or by non-disapproval within a short period of time. Both Illinois and Florida have such laws. (Ill. Rev. Stat., ch. 73, §§ 1065.1-.35 (1961); Fla. Stat., §§ 627.011-.391 (1961)).

The Illinois Insurance Code (Ill. Rev. Stat., ch. 73 (1961) provides a strict system for the regulation of insurance companies, both domestic and foreign, issuing fire and marine insurance policies within its borders, including the personal property floater. The system of insurance regulation in Illinois, as in the case of almost all other states, is to require the filing of forms and rates with the Director of Insurance (§§ 755(2), 1065.22) and no company

may issue a policy except in accordance with filings approved by the Director of Insurance (§§ 1065.22(8), 1065.23). Rates and forms are generally filed by licensed rating organizations on behalf of groups of insurers (§ 1065.4). An insurer may not depart from such filed forms and rates in favor of any individual policyholder at will, but only under a strict proceeding relating to "deviations" which must be approved by the Director of Insurance (§ 1065.25). Any departure from such filed and approved forms subjects the company to severe penalties such as fines or suspension of license (§ 1065.34).

The constitutional justification for compelling such conformity is the recognition that uncontrolled competition in insurance is bad for the public; supervision over rates and forms is the substitute for free competition. Rates must not be excessive, inadequate or discriminatory (§ 1065.19). To assure conformity with the Code and the protection of the public, it is required that policies be issued only through licensed resident agents (§ 1065.57), and provision is made for policing of the companies by licensed rating organizations which examine the policies to see that they conform to the approved filings by the companies (§ 1065.24). The rating laws cover the type of policy here involved: the personal property floater, which is embraced in the definition of inland marine insurance, (§ 616, Class 3(d); § 1065.20).

The Respondent, therefore, was required by law, in complying with an application by a resident of Illinois for a personal property floater policy, to issue the policy in Illinois, through an Illinois agent, and in strict conformity with the forms filed and approved in that state. The suggestion that the Respondent took advantage of the assured in issuing this form of policy must therefore be rejected.

The personal property floater form issued under the Illinois law provides for suit within twelve months after discovery of the loss. Because of the nature of the risks

involved it is deemed fair to the insured to permit the limitations period to run only from discovery of the loss. Limiting suit to twelve months after such discovery is thus more favorable to the insured than the general rule prevailing in this country with respect to the limitations period in suit clauses in fire policies in which the limitation period runs from the date of the loss.

There is an economic reason behind the one year suit clauses in fire and marine insurance policies which is tied in to the theory of rate making requiring rates to be adequate in the interest of preserving the solvency of insurance companies for the public benefit. Fire and marine insurance companies are required to maintain reserves for losses which have occurred until the claim has been disposed of. The Illinois Insurance Code with respect to the maintenance of loss reserves, which is similar to that of most states, provides as follows:

> *Loss Reserves.* (1) A company of Class 3 [which includes the issuer of personal property floater policies] shall maintain a reserve for unpaid loss claims at least equal to the aggregate estimated amounts due or to become due on account of all losses or claims of which the company has received notice * * *." (Ill. Rev. Stat., ch. 73, § 1008(1) (1961)):

The policy behind loss reserve requirements reflects an acknowledgment by states regulating insurance that there is a sound public necessity for requiring more prompt action by an insurance claimant than is required with respect to ordinary contracts. The reserves which a company is required to maintain constitute a charge on its assets which necessarily has a material effect on its balance sheet. Among the thousands of claims filed against insurers, some are invalid and loss reserves must be maintained for such claims when they are made. When the period for suit expires, the financial statement of the company is adjusted to reduce the loss reserve which has been set up for such

barred claims. If the insurer's liability did not terminate after the passage of some reasonably short period, the mounting accumulation of reserves might affect the company's solvency. Solvency can be preserved either by increasing premium rates or by eliminating loss reserves when claims are not prosecuted within the period of time deemed reasonable, and the general pattern of the insurance regulatory laws favors the alternative of limiting the period for bringing suit.

The contract in this case was issued in Illinois, to a resident of Illinois, covering property in Illinois. Its suit clause is valid and enforceable under the laws of Illinois. *Trichelle* v. *Sherman & Ellis, Inc.*, 259 Ill. App. 346 (1930); *Hartzell* v. *Maryland Casualty Co.*, 163 Ill. App. 221 (1911); *Radick* v. *Underwriters at Lloyd's, London*, 137 F. 2d 21 (7th Cir. 1943). Due weight should be given to the interest of Illinois in this contract which was issued in accordance with its laws regulating insurance.

(c) The Interest of Florida in the Contract as Manifested by Its Insurance Statutes.

Florida has not manifested a clearly defined policy with respect to suit limitations in insurance contracts. For example, in disability and accidental death policies, the Insurance Code made mandatory a two year suit clause (Fla. Laws 1947, ch. 24087, § 3, Fla. Ins. Laws, § 642.03(n) (1953) (now Fla. Stat., § 627.0515 (1961)) and permits a two year suit clause in a life insurance policy issued by a fraternal benefit society (Fla. Stat., § 632.311 (1961)), but the Insurance Code makes no provision with respect to suit clauses in fire and marine insurance policies, and it has been held by the Florida Supreme Court in this case that the five year general statute would apply to such policies.

Thus Florida's local policy, with respect to limitation periods in insurance contracts, shows no abhorrence for suit clauses shorter than five years, and is contrary to the

generally accepted pattern of limitations in insurance contracts. Most states have the one year clause for fire insurance (*supra*, p. 22), and longer periods of limitations, running from one to six years, for life and accident insurance (Carnahan, *Conflict of Laws & Life Insurance Contracts*, § 137 (2d ed. 1958).*

The failure of Florida to manifest a policy against short limitations in insurance contracts is reflected by the action of its Insurance Commissioner. The Florida Insurance Code confers on the Insurance Commissioner control over policies issued by insurers in that state and provides that no insurer shall issue or use any form disapproved by the Commissioner (Fla. Stat., § 627.01091 (1961)). The Florida Insurance Commissioner, apparently unaware of the view that the five year limitations provision would be applied to fire policies, adopted a regulation in 1944 making mandatory for use in Florida the New York Standard Fire Insurance Policy which contains the one year suit clause (The Spectator, *Insurance Laws, Taxes & Fees*, p. 247 (1959)); *Insurance Department Rulings*—1944, pp. "Florida, 1-2" (Underwriter Printing & Publishing Co., New York).

Florida has also expressed a hands-off policy with respect to insurance contracts issued or delivered outside of the state. As we have seen, the statute which prohibits an insurance company from using a form of policy unless it has been approved by the Commissioner applies only to policies

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* The Brief for Petitioner cites Carnahan (§ 137) for the proposition that the states have adopted prohibitory legislation to forestall the insertion by insurers of short limitations clauses. The author refers only to life insurance contracts and even as to such contracts, he cites statutes in at least eight states approving one year suit clauses and, in many more, approving eighteen month and two year suit clauses (§ 26h, nn. 83, 84). Furthermore, Carnahan does not state that any of the life insurance statutes which run from one to six years, purport to invalidate short suit clauses in other states. On the contrary he cites *Delta & Pine* (§ 138) as governing the application of such clauses.

"delivered or issued for delivery in Florida" (Fla. Stat., § 627.01091(1) (1961)). To make it even clearer the Florida Insurance Code provides that the chapter regulating the form of insurance contracts shall not apply "to contracts not issued for delivery in this state nor delivered in this state" (Fla. Stat., § 627.01001(2) 1961). Further evidence of Florida's lack of interest in contracts issued outside the state is found in the section of the Insurance Code dealing with the requirement for a license to do an insurance business in the state where it is provided that no license shall be required of an insurer for engaging in transactions involving a policy after it is issued covering subjects of insurance "not located in the state at the time of issuance" where the policy was lawfully written or delivered outside the state (Fla. Stat., § 624.0201(2) 1961)).

From the foregoing analysis of the Florida Insurance Code it is manifest that Florida has not demonstrated a policy of abhorrence to short limitations clauses in insurance policies issued in Florida to its residents and, as to insurance policies issued outside the state, it disclaims any interest even where the insured is a resident of the state.

The expression of a deeply felt policy with respect to suit limitations in insurance contracts has been declared to be a test in determining whether the forum state has a sufficient interest to override the contract. That test is not met here. Like Louisiana in the *Watson* case Florida has "an insurance code which comprehensively regulates the business of insurance in all its phases" (348 U. S. 66, 67). But unlike Louisiana in that case, its Insurance Code contains no expression against the contract clause in issue. The invalidating statute, § 95.03, which was adopted in 1913 before there were modern insurance regulatory statutes, is part of Florida's general laws listing statutes of limitation.

Where a strong public policy exists, Florida does not hesitate to demonstrate it. Its Insurance Code contains a

statute similar to the California Unauthorized Insurers Process Act (Cal. Ins. Code, §§ 1610-1620), the validity of which was upheld in *McGee* v. *Int'l Life Ins. Co.*, 355 U. S. 220 (1957). Aligning itself with a number of other states concerned with the problem of residents holding policies delivered to them in the state by unauthorized insurers, the Florida statute contains a firm declaration by the legislature of the nature of its interest and the necessity for providing a method of substituted service by exercising "its power to protect its residents" (Fla. Stat., § 626.0504 (1961)).

The Court has adhered to the view that a state seeking to uphold legislation which might conflict with constitutional guarantees must clearly exhibit a strong and positive policy. In *Hanson* v. *Denckla*, 357 U. S. 235 (1958), the Court distinguished *McGee* v. *Int'l Life Ins. Co.*, *supra*, by pointing out that its decision upholding the California Unauthorized Insurers Process Act had made special note of the interest of California in providing redress for its citizens. The Court said:

> "This case is also different from *McGee* in that there the State had enacted special legislation . . . to exercise what *McGee* called its 'manifest interest' in providing effective redress for citizens who had been injured by nonresidents engaged in an activity that the State treats as exceptional and subject to special regulation." (at p. 252).

If Florida wishes to apply its antiquated statute to invalidate contracts made within its borders, there can be no attack against its policy on the grounds of due process. But due process of law as applied to a state statute affecting foreign contracts must meet a sterner test. For the statute to invalidate the contract, it must evidence a strong, justifiable policy of such importance for the protection of the residents of the state that it overrides the private and public interest in sustaining the contract, valid under the law of the foreign state.

(d) The Interest of Florida in the Contract as Manifested by the Invalidation Statute.

The Supreme Court of Florida held that the statute in issue applies to "any contract whatever—foreign or domestic" when the contract is before a court in Florida in a case in which the court has jurisdiction (133 So. 2d 735, 738). We are compelled to accept that interpretation. It is for the Florida Supreme Court to say what Florida's statute means and for this Court to determine whether it is constitutional as applied to this case.

The statute as we are required to accept it condemns itself as unconstitutional. It does not demonstrate any particular interest in the protection of residents of Florida. It applies to any contract made in another state between residents of other states relating to subject matters in other states, as long as the parties are within the jurisdiction of the court. Under the principle of *Watson* and *Delta & Pine*, the statute fails to demonstrate a policy designed to protect local interests which is necessary to override a contract with which it comes into conflict.

The Court of Appeals in its last opinion found the decision of the Florida Supreme Court untenable and could not bring itself to "attribute to the Florida Court a literal meaning to the language it used" (319 F. 2d 505, 510), but the mischief of the opinion lies in its application by others who read it as written. Thus, in *Schluter* v. *Nat'l Union Fire Ins. Co.*, 144 So. 2d 95 (Dist. Ct. App. Fla. 1963), the Florida District Court, feeling itself bound by the pronouncement of the Florida Supreme Court in its *Clay* decision, held Florida's statute 95.03 to be a bar to the assertion of a one year suit clause in a maritime insurance policy issued in New Jersey to a New Jersey resident covering a vessel plying from Eastport, Maine, to Cedar Keys, Florida where the damage occurred while the ship was in Atlantic waters off the Florida coast.

The result of the *Clay* decision by the Florida Supreme Court is to disassociate Florida's local policy interest in abrogating a foreign contract from any concern over the protection of residents of the state. Thus weight cannot be given on the constitutional issue to the protection of Florida's residents as a part of its policy to nullify any suit clause of less than five years.

Perhaps the error in the *Schluter* case is attributable to the failure of the insurance company to raise the constitutional issue as a result of which the case was decided as one involving the issue of conflict of laws. As such it is out of line with the weight of authority in these cases. *Union Central Life Ins. Co.* v. *Barnes*, 175 Ky. 364, 194 S. W. 339 (1917); *Equitable Life Assur. Soc.* v. *McRee*, 75 Fla. 257, 78 So. 22 (1918); *Mutual Life Ins. Co.* v. *Hess*, 161 F. 2d 1 (5th Cir. 1947).

Where decisions of state courts are clearly incorrect in their application of conflict of laws principles, it is considered wise for the Court to correct such erroneous pronouncements. As stated by Goodrich:

> "It is submitted that it will have a salutary effect for the Supreme Court to continue to take jurisdiction in cases where it feels that a state court has gone badly astray in a Conflict of Laws case. We still find in some state courts a reluctance to give operative effect to any but local rules even where the facts calling the rules into play have occurred elsewhere. It seems a desirable thing for the Supreme Court, which sees the nation as a whole, to correct instances of too shocking or too obstinate provincialism upon the part of the courts of a state. The result should be to create a greater degree of uniformity in the disposition of cases regardless of the fortuitous choice of the forum." (Goodrich, *Conflict of Laws*, p. 32 (3rd ed. 1949)).

(e) The National Interest in Uniformity.

When insurance was held to be commerce (*United States* v. *South-Eastern Underwriters Ass'n, supra*) Congress had the choice of regulating the business or leaving it to the states. It decided to permit continued state regulation (McCarran-Ferguson Insurance Regulation Act, *supra*). Federal regulation would have been uniform. It was recognized that regulation of the insurance business within the states was not uniform. But the concession to multiple regulation does not require the acceptance of the principle that an insurance contract made in one state shall be subject to differences in interpretation and enforcement by a host of other states. It is in the national interest that commerce be free from local regulation which impedes it and does not have a uniform effect (*Southern Pacific Co.* v. *Arizona*, 325 U. S. 761 (1945)). This is particularly important with respect to insurance contracts covering inland marine risks (of which the personal property floater policy is but one example) since such contracts insure products of farm and industry moving by water, truck and rail throughout the country. The enforcement of the insurance contract should not depend on the accident of where the property might be located at the time the loss occurs. That is contrary to the policy of the United States and is not permitted where the commercial transaction is under the control of Congress (*J. B. Effenson Co.* v. *Three Bays Corp.*, 238 F. 2d 611 (5th Cir. 1956)).

The Court has held in *State Bd. of Ins.* v. *Todd Shipyards Corp.* (370 U. S. 43 (1962)) that where an insurance contract is made in one state, another state may not constitutionally regulate that contract by a regulatory tax merely because the insured and the property insured are located in the taxing state. That case involved an attempt to regulate insurance policies made outside of Texas on property located in Texas by imposing a tax on them for the purpose

of discouraging the purchase of insurance in unlicensed companies. The insured was a New York corporation doing business in Texas which procured an insurance policy in New York covering its property in Texas. The contacts between Texas and the insurance transaction were that the property covered was physically located in Texas, the insured was present in Texas and any loss which occurred would have taken place in Texas. The Court said that "these were not sufficient contacts with Texas to justify the tax under the requirements of due process." The contacts of Todd Shipyards with Texas were greater than the contacts of the insured in this case with Florida.

In *J. B. Effenson Co.* v. *Three Bays Corp., supra,* the same statute under consideration in this case, Fla. Stat. § 95.03 was sought to be invoked to nullify a suit clause in a charter party which, by incorporating the terms of the Carriage of Goods by Sea Act (46 U. S. C. § 1303), adopted a one year suit clause. The Act did not govern the transaction because it does not apply to charter parties. It was incorporated by the parties in their contract, which was made in Florida, as a convenient method of defining their rights and liabilities. Thus the issue was whether the Florida statute against suit clauses shorter than 5 years should prevail against the contract. No constitutional question was involved. The case is considered as bearing on the weight to be given to Florida's policy against limited suit clauses in contracts. The Court of Appeals upheld the suit clause against the attack of § 95.03 on the ground that the case involved a maritime matter which was of federal concern and that the federal policy favored one year suit clauses in maritime transactions as shown by the Carriage of Goods by Sea Act. The court said:

> "It was not intended by the framers of the Constitution 'to place the rules and limits of maritime law under the disposal and regulation of the several

States, as that would have defeated the uniformity at which the Constitution aimed on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign States." (238 F. 2d. at 615).

• • •

"If there be any public policy question presented by this appeal, the question is one of the public policy of the United States rather than the State of Florida. The public policy of the United States may be found in the Acts of Congress and such policy so declared may be applied even though the statute is not directly applicable but only made so by being incorporated by reference • • • No public policy is opposed to the incorporation in a charter party of the provisions of the Carriage of Goods by Sea Act, supra, limiting the time for bringing suit • • •." (238 F. 2d at 616).

A similar result was arrived at in the case of another unsuccessful attempt to invoke Florida's § 95.03 to void a one year suit clause in a steamship transportation ticket covering a trip from Miami to New York where the passenger alleged he was injured while the vessel was in Florida waters. *Scheibel* v. *Agwilines, Inc.*, 156 F. 2d 636 (2d Cir. 1946). Here also the constitutional question was not raised and the case is cited as bearing on the weight to be given to Florida's policy as opposed to the competing interest that there be uniformity in matters of national commerce. In support of this doctrine, the Court of Appeals said:

"That state statutes must yield so that uniformity may prevail in interstate transportation has been recognized by the courts even though there was no federal legislation dealing expressly with suit clause limitations •.• •." (156 F. 2d at 638).

We submit that it is sound public policy to discourage the Balkanization of the United States in relation to commercial transactions involving moving goods and parties who move from state to state or do business in several states.

It is not desirable, except in the case of a specially important local interest, to stop a contract at the state's border and strike out one of its clauses. In the process of weighing the interest of Florida against competing interests, the national interest of uniformity in the interpretation and enforcement of a contract made elsewhere should be placed on the scale.

CONCLUSION

It is respectfully submitted that the judgment of the court below should be affirmed.

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